

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

MIGUEL A. GOMEZ,

Petitioner,

vs.

Case No. 12-cv-0175-DRH-SCW

JAMES CROSS, JR.,

Respondent.

ORDER

HERNDON, Chief Judge:

Miguel Gomez, currently incarcerated in the USP Florence in Colorado, brings this habeas corpus action pursuant to 28 U.S.C. § 2241 to challenge the constitutionality of two conditions of his confinement: the revocation of good time credits and the increase of his custody level. Mr. Gomez admits that, at the time of filing his petition, he had not completed the Bureau of Prisons' (BOP's) administrative remedy process: he had "yet to receive official response" on his BP-10 appeal but had "been instructed to assume a negative response and to proceed" to file the instant petition. (Doc. 1, p. 2).

It is well settled that federal prisoners must first exhaust administrative remedies before bringing a petition under § 2241. *Schmanke v. Irwins*, 207 F. App'x 655, 657 (7th Cir. 2006) (citing *Moore v. Olson*, 368 F.3d 757, 758 (7th Cir. 2004)). *See also Greene v. Meese*, 875 F.2d 639, 641 (7th Cir. 1989) (the

BOP “must be given a chance to clean up its act before the courts are asked to intervene.”). This action was filed in late February 2012. It is now August and petitioner has not filed any further documentation with this Court to indicate whether he has received any response from BOP officials regarding his final administrative appeal. The instant motion will therefore be dismissed without prejudice. Should Mr. Gomez wish to re-file a petition, he should do so in the District Court for the District of Colorado. *See Morales v. Bezy*, 499 F.3d 668, 669–70 (7th Cir. 2007) (a § 2241 petition “must be filed in the district in which the petitioner is confined rather than in the one in which he was sentenced.”) (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 442–43 (2004)).

IT IS HEREBY ORDERED that Mr. Gomez’s petition for a writ of habeas corpus is **DISMISSED without prejudice**. Nothing in this order shall be construed as an opinion on the merits of Petitioner’s claims for relief. The Court close the file.

IT IS SO ORDERED.

DATE: August 13, 2012

Digitally signed by
David R. Herndon
Date: 2012.08.13
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Chief Judge
United States District Judge